

224-011094

OPERATING AGREEMENT



This Agreement, made this 17th day of March, 1987, by and between the Commonwealth of Virginia, Virginia Port Authority, a body corporate of the Commonwealth of Virginia (sometimes hereinafter referred to as 'VPA') and Virginia International Terminals, Inc., a Virginia nonprofit, nonstock corporation (sometimes hereinafter referred to as 'VIT').

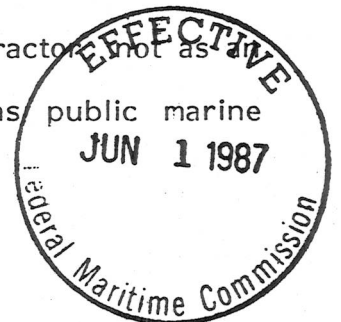
WITNESSETH

ARTICLE I

OPERATION OF TERMINALS

Section 1.1

In consideration of the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VPA and VIT agree that VIT shall manage, operate, and conduct the business of the public marine terminals of VPA hereinafter listed (the "Terminals"), in accordance with the rules, regulations and policies established by the Board of Commissioners of VPA pursuant to Chapter 10, Title 62.1 of the Code of Virginia, and expressly subject to the terms, conditions and restrictions contained in Resolution No. 84-8 of VPA, adopted June 13, 1984, as amended (the "Resolution"), and contained in this Agreement. It shall be the essence, spirit and philosophy of this Agreement that VIT shall operate the Terminals and exist as an independent contractor, not as an agent of VPA, and that it shall operate the same as public marine



facilities in a manner which is competent, efficient and competitive with other marine terminal facilities. The Terminals shall include:

- A. Norfolk International Terminals (hereinafter referred to as 'NIT'), being described more particularly in Exhibit "A" attached hereto and made a part hereof.
- B. Newport News Marine Terminals (hereinafter referred to as 'NNMT'), being described more particularly in Exhibit "B" attached hereto and made a part hereof.
- C. Portsmouth Marine Terminal (hereinafter referred to as 'PMT'), being described more particularly in Exhibit "C" attached hereto and made a part hereof.
- D. Other facilities and tangible real and personal properties, property rights and interests of the VPA, whether now existing or to be constructed, installed or acquired thereafter, except properties in which the VPA has a non-possessory interest solely by virtue of its having financed the same with Special Obligations (as defined in the Resolution; all terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Resolution).

#### Section 1.2

Operation of the Terminals by VIT is made subject, however, to the following limitations, restrictions, reservations, easements and rights:

- A. All easements for the maintenance of utility and transportation services existing at NIT, PMT, and NNMT at the date of commencement of this Agreement, all similar easements existing with respect to and at the time

any other terminals or terminal operations are included within the scope of this Agreement and all future easements which may be granted by the VPA. VPA will consult with VIT and receive recommendations from VIT concerning future easements with respect to future terminal engineering and operational implications.

- B. All present and future federal, state, and municipal laws, ordinances, regulations, orders and zoning affecting the whole or any part of all terminals included in this Agreement.
- C. The various restrictions, requirements, declarations, rights and covenants in Contract Nos. MA-4667, MA-4668 and MA-8955, and addenda and amendments thereto, between the United States of America, Maritime Administration and the VPA.
- D. All of the provisions, definitions, limitations and obligations imposed on NIT by the Bond Resolution adopted by the VPA and authorizing the issuance of the Norfolk International Terminals Revenue Bonds of 1978.
- E. All of the provisions, definitions, limitations and obligations imposed on NNMT by the Bond Resolution adopted by the VPA pursuant to the issuance of the Newport News Marine Terminal Revenue Bonds of 1980.
- F. All of the provisions, definitions, limitations and obligations imposed on PMT by the Unification Agreement

dated March 30, 1971, as amended, by and among the VPA, Portsmouth Port and Industrial Commission, and the City of Portsmouth, Virginia, by an Indenture and Note, each dated as of April 1, 1971, in the amount of \$3,828,000 by the VPA to the City of Portsmouth, and by Agreement of Lease dated November 4, 1975 by and between Portsmouth Port and Industrial Commission and the VPA.

- G. VPA employees shall have the right of unobstructed ingress and egress. Invitees, consultants and contractors of VPA, as may require contact with terminal employees and daily business operations, shall be granted access upon reasonable notice to VIT.
- H. This agreement supplants, supersedes, and replaces in total all existing leases and agreements between VIT and its predecessors-in-interest and VPA.

## ARTICLE II

### TERM

#### Section 2.1

- A. This Agreement shall commence on July 1, 1987 and shall continue until terminated.
- B. VPA shall have the right to terminate this Agreement, at its sole discretion, upon written notice to VIT. Should this Agreement be terminated VPA agrees that consideration will be made to preserve and protect the current regular employees of VIT with respect to



continued employment opportunity within the successor marine terminal operating organization; however, this should not be construed as a guarantee by VPA of continued employment or as the granting of a property right in continued employment to existing employees.

C. (1) VPA shall have the right to terminate this Agreement upon the default by VIT. The following shall constitute events of default under this Agreement:

(a) If VIT shall fail to pay to VPA, when due, 'Monies Due', as defined in Article III of this Agreement within 10 days after written notice thereof shall have been given to VIT.

(b) (i) Except as provided in subsection (ii) hereof, if VIT shall fail to perform, observe or comply with any of the terms, covenants, conditions or provisions binding upon VIT contained in this Agreement, after written notice thereof shall have been given to VIT. (ii) if VIT fails to make any repair, restoration, or replacement of any part of the Terminals within thirty (30) days after written notice of its failure to do so shall have been given to VIT; provided, however, that if VIT fails to make any repair, restoration, or replacement which, if begun and prosecuted with due diligence cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable VIT to begin and complete said repair, restoration or replacement with due diligence.

- (c) If VIT abandons the Terminals, or any substantial part thereof, or its operations thereon herein contemplated, and such abandonment continues after written notice to resume the occupancy, use and operation thereof shall have been given by VPA to VIT.
- (d) If VIT shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or other pleading seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of VIT or of all or any substantial part of its properties, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.
- (e) If, by an order or decree of a court of competent jurisdiction, VIT shall be adjudicated a bankrupt or insolvent; or if reorganization, liquidation or similar relief shall be granted under or pursuant to a petition or other pleading filed against VIT seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation; or if, by order or decree of such court, there shall be appointed, without the consent or acquiescence of VIT, a trustee in bankruptcy or

reorganization or a receiver or liquidation of VIT or of all or any substantial part of its property.

- (2) Upon the occurrence of any one or more of the events of default specified in Section 2.1 C(1) hereof, VPA may give to VIT written notice of termination of this Agreement, and upon the date specified in such notice, this Agreement shall terminate and expire and VIT shall vacate and surrender possession of the Terminals, and VPA or its designee may re-enter and take possession of the Terminals. VIT agrees to perform all of its duties and obligations under this Agreement until the date specified in such written notice of termination, in the manner and within the times required by this Agreement notwithstanding the giving of such notice by VPA.
- (3) Upon the occurrence of any one or more of the events of default specified in Section 2.1 C(1) hereof, in lieu of terminating this Agreement and upon written notice to VIT, VPA or its designee may, on the date specified in such notice, re-enter and take possession of the Terminals and remove therefrom all persons, and may (but shall be under no obligation to) operate or let the Terminals or any part thereof, from time to time, in the name of VIT or VPA or otherwise, without further notice, for such term or terms, on such conditions, and for such uses and purposes, as VPA or its designee may determine, and may collect and receive all revenues and rents derived therefrom and apply the same to the payment of the Monies Due hereunder, VIT remaining liable for any deficiency. VIT agrees to perform all of its

duties and obligations under this Agreement, until VPA or its designee re-enters and takes possession in the manner, and within the times required by this Agreement notwithstanding the giving of such notice by VPA.

- (4) The rights and remedies of VPA specified in this Agreement shall be cumulative, and in addition thereto, VPA shall have all other rights and remedies now or hereafter conferred by law.
- (5) No failure by VPA to insist upon the strict performance of any term, covenant, condition or provision of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of Monies Due during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, condition or provision. No term, covenant, condition or provision of this Agreement binding upon VIT, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by VPA. No waiver of any breach shall affect or alter this Agreement, but every term, covenant, condition and provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. In addition to the other remedies in this Agreement provided, VPA shall be entitled to the restraint by injunction of the violation, or the attempted or threatened violation, of any of the terms, covenants, conditions or provisions of this Agreement.

ARTICLE III  
PAYMENTS TO VIRGINIA PORT AUTHORITY AND  
USE OF SURPLUS FUNDS

Section 3.1

VIT shall pay the VPA without previous demand the Monies Due by the fifteenth day of each month.

Section 3.2

The term 'Monies Due' shall mean so much of VIT's Net Revenues as shall be required to enable the Authority to meet the following obligations:

- A. first, any payments necessary to meet the debt service on Prior Obligations and not otherwise provided for by VIT or by appropriations by the General Assembly from the General Fund of the State or the Commonwealth Port Fund;
- B. second, an amount equal to VPA's Current Expenses budgeted for such month;
- C. third, any payments necessary to meet the requirements of Section 504(a) and 504(b) of the Resolution;
- D. fourth, any payments necessary to enable the VPA to meet its obligations under any present or future subordinated bonds or other indebtedness of the VPA not otherwise provided for by appropriations by the General Assembly from the General Fund of the State or the Commonwealth Port Fund; and
- E. fifth, an amount equal to the obligations incurred by VPA for capital equipment, additions and improvements for the preceding month; provided, however, that if VIT shall be relieved of its obligation to maintain the VIT Reserve

Maintenance and Improvement Fund by a resolution duly adopted by the VPA, VIT shall pay to the VPA, after making the transfer provided for in subparagraphs (A) through (D) inclusive above, an amount sufficient to make the balance of the Reserve Maintenance and Improvement Fund equal to the greater of (1) \$2,500,000 or (2) one-fourth (1/4) of the sum of the amounts budgeted by the VPA and VIT to be expended in the then-current fiscal year for capital equipment, additions, and improvements.

### Section 3.3

In determining the Net Revenues available to VIT to make the monthly payments to VPA hereby required of it, VPA and VIT agree that there shall be deducted from the Gross Revenues derived by VIT from the operation of the Terminals for the prior month, the amounts permitted by Section 718(c) of the Resolution.

### Section 3.4

After payment each month by VIT to the VPA of the amounts required by Section 3.2 hereof and unless VIT shall have been relieved of its obligation to maintain the VIT-Reserve Maintenance and Improvement Fund, VPA and VIT agree that VIT shall then deposit to the credit of the VIT-Reserve Maintenance and Improvement Fund an amount sufficient to make the balance of the VIT-Reserve Maintenance and Improvement Fund equal to the greater of (1) \$2,500,000 or (2) one-fourth (1/4) of the sum of the amounts budgeted by the VPA and VIT to be expended in the then current fiscal year for capital equipment, additions and improvements.

### Section 3.5

After payment by VIT to the VPA of the amounts required by Section 3.2 hereof and the deposit, if any, made by VIT to the VIT-Reserve Maintenance and Improvement Fund, VIT shall pay monthly to the VPA the balance of its Net Revenues derived from the operation of facilities leased by the VPA to VIT for use by the VPA for any lawful purpose.

### Section 3.6

Procedure for management of funds shall be as follows:

- A. All Gross Revenues collected and received by or for VIT shall be promptly deposited to the credit of its operating account designated 'VIT Operating Account,' and shall be established, under such designation, in a bank or banks organized under Federal or State law, which shall provide security therefor comparable to that required for the deposit of State funds.
- B. VIT shall pay monthly, from money in the VIT Operating Account, costs and expenses incurred in the operation, repair and maintenance of the Terminals, which shall include without limiting the generality of the foregoing, all amounts specified by Section 3.3 hereof and any other expenses required to be paid.
- C. VIT shall promptly pay to VPA the Monies Due as provided in Section 3.1. All monies received from VIT by the VPA shall be promptly deposited to the credit of the General Revenue Fund.

- D. Funds in the General Revenue Fund shall be applied immediately as received by the VPA first to the payment, when due and payable, of all obligations and in the order set forth in Section 3.2 and Section 503 and Section 504 of the Resolution.
- E. Money in the VIT Operating Account not immediately required by VIT for Current Expenses, including particularly money set aside as the operating account cash balance shall be invested by VIT and any interest or any earnings derived from any such investment shall be credited, and any losses shall be charged, to the VIT Operating Account. Investments under this paragraph shall comply with applicable provisions of State law and the Resolution and shall mature or shall be subject to redemption at the option of VIT at such time as the money invested will be required.
- F. Money in the VIT-Reserve Maintenance and Improvement Fund Account shall be managed as follows:
- (1) Money may be disbursed by VIT (i) for paying, in connection with the Port Facilities, expenses related to the Port Facilities payable as Current Expenses, and not previously paid, the cost of unusual or extraordinary maintenance, repairs, renewals or replacements, engineering and architectural expenses incurred under the provisions of this Section, premiums on insurance carried under the provisions of the Resolution, the cost



of fixtures, machinery, equipment, furniture, real property and additions to, or improvements, extensions or enlargements of, the Port facilities and (ii) for deposit to the credit of the Sinking fund.

(2) Payments from the Reserve Maintenance and Improvement Fund shall be made by requisition duly executed and filed with the fiscal officer of VIT designated by the Board, setting forth the following:

- (a) the item number of each such payment,
- (b) the name of the person, firm or corporation to whom each such payment is due,
- (c) the respective amounts to be paid,
- (d) the purpose by general classification for which each obligation to be paid was incurred,
- (e) that obligations in the stated amounts have been incurred by VIT and are presently due and payable and that each item thereof is a proper charge against the Reserve Maintenance and Improvement Fund and has not been paid,
- (f) that there has not been filed with or served upon VIT notice of any lien, right to lien or attachment upon, or claim affecting the right of any such persons, firms or corporations to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation, and

(g) that such requisition contains no item representing payment on account of any percentage which VIT is at the date of such requisition entitled to retain and as to obligations payable to contractors on account of construction costs or to vendors on account of land or interests in land, a certificate signed by the Engineer and attached to such requisition, certifying their approval thereof.

All checks written on the VIT-Reserve Maintenance and Improvement Fund Account will be co-signed by the Executive Director of the VPA and the General Manager of VIT or their designated representatives.

- (3) Money held for the credit of the Reserve Maintenance and Improvement Fund shall, as nearly as may be practicable, be invested and reinvested in Investment Obligations which shall mature, or which shall be subject to redemption at the option of the holder thereof, not later than the respective dates when the money held for the credit of such Fund will be required for the purposes intended.

Investment Obligations so purchased shall be deemed at all times to be a part of the Reserve Maintenance and Improvement Fund, and the interest accruing thereon and any profit realized or any loss resulting from the investment of money shall be credited to, or charged against, the Fund.

### Section 3.7

Subject to the provisions of this Article, VIT shall control the handling of all money received by or for VIT in connection with the Terminals and shall establish an adequate system, based on standard, prudent practices of internal control, covering the receipt and expenditure of money in the purchase of equipment and the maintenance, repair, operation, and improvement of the Terminals.

## ARTICLE IV

### OPERATION OF FACILITIES

#### Section 4.1

VIT shall not use, or permit the use of the Terminals, or any part thereof, for any unlawful purposes, or permit any nuisance to exist thereon.

#### Section 4.2

VIT shall promptly comply with all laws, ordinances, rules, regulations, policies, and requirements of all federal, state and local governments and appropriate departments, commissions, boards and officers thereof, including the VPA, as they relate to the use, or manner of use, of the Terminals. However, VIT may contest by appropriate legal proceedings, with VPA approval and without cost or expense to VPA or the Commonwealth of Virginia, the validity of any law, rule, regulation or requirement affecting the Terminals.

#### Section 4.3

VIT shall be responsible for and pay promptly and directly, where appropriate, all taxes, license fees, service charges, and any

special assessments lawfully incurred, levied or assessed in connection with the Terminals.

#### Section 4.4

VIT shall not create or suffer to be created any lien or encumbrance upon the Terminals or any part thereof without the express prior written approval of the VPA. VIT shall satisfy or cause to be discharged within sixty (60) days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other items which, if not satisfied, might by law become a lien upon the Terminals or any part thereof; provided, however, that nothing in this Section shall require the VIT to satisfy or discharge any such lien or claim so long as the validity thereof shall be contested in good faith by appropriate legal proceedings.

### ARTICLE V

#### TERMINAL CHARGES AND RATES

##### Section 5.1

VPA and VIT recognize and acknowledge the statutory authority and responsibilities of VPA with respect to the establishment of rates, charges, rules, regulations, tariffs, practices and requirements, including all revisions thereof (hereinafter referred to collectively as 'rates'), concerning the use of the Terminals and related services. VPA shall, by resolution of its Board of Commissioners setting forth appropriate guidelines and standards not inconsistent with and to the extent permissible by the Act, delegate to VIT the authority to fix, revise and enforce such rates in the manner and to the extent that VPA deems necessary or desirable, including but not limited to the

authority to fix and revise rates jointly with VPA. However, any such delegation shall not compromise the responsibility and authority of VPA to determine rates necessary to carry out its functions pursuant to Article VI of this Agreement and its statutory mandates.

Such guidelines shall provide that pricing and rates will be maintained consistent with requirements to ensure competitive operation and availability of marine terminal services and in consonance with guaranteeing that the monetary conditions of the Resolution are met and the generation and protection of net income sufficient to satisfy such financial obligations of the Resolution.

VIT shall, if so requested by VPA, supervise the publication of the rates.

#### Section 5.2

VIT shall provide timely notification to VPA concerning any planned collection activities beyond the posting of dunning letters.

### ARTICLE VI

#### MARKETING

#### Section 6.1

The VPA shall perform sales and marketing functions for the Terminals in accordance with the goals and objectives set forth by the VPA Board of Commissioners. The VPA Board of Commissioners shall, on a periodic basis, obtain the views and comments of VIT with respect to sales and marketing.

VPA shall be responsible for advertising, public relations, cargo solicitation, traffic analysis, and research. VIT shall support and assist VPA in the performance of these responsibilities. VIT shall also

have the responsibility for maintaining coordinated customer relations and services for customer matters concerning current business.

Section 6.2

VIT shall grant and make available to VPA access to information systems data bases necessary for VPA to carry out its marketing information and research functions. Both VIT and VPA will strive to ensure that the proprietary and confidential nature of certain customer and business records will be protected from unauthorized dissemination. VPA recognizes, and VIT acknowledges, the legal responsibility of VPA for compliance with the Virginia Freedom of Information Act.

ARTICLE VII

MAINTENANCE, INSPECTION, IMPROVEMENTS  
AND DEMOLITION OF FACILITIES

Section 7.1

VIT shall at all times during the term of this Agreement, keep and maintain the real and personal property, more particularly identified in Exhibits A, B, and C and any additions made thereto, in at least as good condition or repair as they are at the time of the commencement date of this Agreement, ordinary wear and tear excepted.

Section 7.2

Division of responsibility for capital maintenance projects shall be determined by VPA and VIT staffs, but subject to approval by VPA at the time it considers the VIT budget.

Section 7.3

Maintenance activities shall be scheduled so as best to accommodate cargo handling activities at the Terminals, where practical.

#### Section 7.4

VPA, biannually, shall employ an independent consulting engineer to make an inspection of the Terminals who shall submit a written report as to the physical condition of each Terminal's real and personal property, whether it is being properly maintained and specifying required repairs or maintenance. If any repair work or maintenance not budgeted for by VIT is required, VPA shall report the same to VIT and VIT shall, subject to the availability of funds therefor, accomplish said repair work or maintenance within a reasonable time . In the event there is a dispute between VPA and VIT over the necessity for or extent of such repair work or maintenance, the dispute shall be resolved by the VPA Board of Commissioners, whose decision shall be final and binding.

#### Section 7.5

All buildings, structures, improvements, equipment and fixtures which shall be constructed, placed or installed on the Terminals as a substitute for, an addition to, or in renewal or replacement of, any buildings, structures, improvements, equipment or fixtures constituting part of the Terminals shall become the property of VPA and part of the Terminals unless specifically waived in writing by the Executive Director of VPA.

#### Section 7.6

Subject to the requirements of state law governing the construction, erection, removal, remodeling of, or addition to any building or any appurtenant structure on the property of the Commonwealth of Virginia, VIT may make such minor alterations to any of the real property now or hereafter existing on the Terminals and,

with the prior written approval of the Executive Director of VPA, may construct or place thereon such additional improvements as VIT deems necessary or desirable for any of the purposes herein contemplated.

#### Section 7.7

VPA shall prepare a Master Development Plan for the Terminals. At least annually, VPA and VIT will review such plan and make such revisions as may be required. The review will establish budget priorities for additional facilities, construction sequences and such other improvements or modifications as may be desirable to meet the needs of the Terminals. VIT will make available to VPA plans and documents necessary for VPA to prepare such plan and will cooperate with VPA in providing input and technical advice.

#### Section 7.8

VPA, after consultation with VIT, shall decide which party, VPA or VIT, shall undertake maintenance dredging in order to keep the channels and slips contiguous to the berths dredged to a sufficient depth and width for the reasonable accommodation of vessels desiring to use the berths.

#### Section 7.9

Responsibility for major equipment purchases will be established by VPA at the time it considers the VIT budget.

#### Section 7.10

VPA and VIT will perform construction management, design supervision, contract administration and periodic inspection for their respective projects. VPA and VIT will coordinate activities necessary to ensure that construction work does not interfere with cargo operations and other projects and activities at the Terminals.



#### Section 7.11

Subject to the requirements of state law governing the construction, erection, removal, remodeling of, or addition to any building or any appurtenant structure on the property of the Commonwealth of Virginia, and subject to the requirements of Section 704 of the Resolution, VIT, at its own expense, may demolish or remove any improvement to real property existing on the Terminals, provided that it shall be first determined by VPA that the demolition or removal of any such improvement shall not impair the structural soundness, efficiency or the economic value of the port facility VIT, at its own expense, shall repair all damage to the affected Terminal caused by any such demolition or removal.

### ARTICLE VIII

#### INSURANCE

#### Section 8.1

VIT shall insure the Terminals in accordance with the requirements of Section 707 of the Resolution against such risks as are currently insured against in connection with the operation of marine terminal facilities in such amounts as may be agreed upon by VPA and VIT.

VIT shall pay timely the premiums for all applicable insurance, when and as such insurance is commercially available; provided that appropriate co-insurance clause percentage and level of deductibles may be established as the same are obtainable, considering both adequacy of coverage and premiums payable.

If the VPA shall determine that adequate insurance protection in conformity with this Section shall be provided thereby, the VPA may

provide or cause to be provided upon a self-insurance basis the insurance coverage specified in Section 707(i) - (iii) of the Resolution.

#### Section 8.2

Each insurance policy required by Section 8.1 herein shall be in such form and with such provisions as specified in Section 708 of the Resolution.

#### Section 8.3

Copies of all insurance policies referred to in this Article shall be sent with Declaration Page to VPA for use by VPA and the State Treasurer and their agents and representatives. The VPA, in its own name, may demand, collect, sue and receipt or may cause the State Treasurer to demand, collect, sue and receipt, for any insurance money which may become due and payable under any policies of insurance required hereunder if VIT shall have failed to do so within thirty (30) days after the receipt of written notice from the VPA or the State Treasurer. The State Treasurer shall not in any way be liable or responsible for the collection of insurance money in case of any loss or damage.

#### Section 8.4

If any part of the Terminals is destroyed or damaged by fire or other casualty, VIT shall with the approval of VPA promptly replace, repair, rebuild or restore the property damaged or destroyed to substantially its same condition as prior to such damage or destruction, with such alterations and additions as the VPA may determine will not impair the capacity or character of the terminals for the purpose for which they are being used or intended to be used, applying so much as may be necessary of (1) the net proceeds of insurance received on

account of any such damage or destruction, or (2) other available funds, to payment of the cost of such replacement, repair, other available funds, rebuilding or restoration. VIT, with approval of VPA, may discontinue operation of any Terminal which cannot be so repaired.

Any balance of the net proceeds of insurance remaining after payment of the cost of such replacement, repair, rebuilding or restoration shall be applied as provided in the respective Bond and Note Resolutions and Indenture and Note hereinbefore described in Sections 1.2 D, E and F and to the credit of the General Revenue Fund for all other proceeds.

#### Section 8.5

In the event VIT shall at any time fail or refuse to procure or maintain insurance coverage as herein defined, VPA, the State Treasurer, or the Attorney General may cause issuance to be procured and maintained, and if it does so, VIT shall be obligated to reimburse VPA promptly for all amounts expended in connection therewith.

### ARTICLE IX

#### ACCOUNTING, AUDITING AND BUDGETING

#### Section 9.1

VIT shall establish and maintain an accounting system in accordance with generally accepted accounting principles, and shall specifically include separate accounts for each terminal operated by VIT.

The fiscal year of VIT shall begin July 1 and end on June 30.

### Section 9.2

At the end of each fiscal year, VIT shall within 45 days have its financial statement audited by a certified public accountant licensed in Virginia and approved by VPA. Within 60 days after the close of each fiscal year, the report will be submitted to VIT and VPA. The report shall encompass all such matters customarily included in an annual audit report and shall specifically include a report on the internal control on which the audit was based.

### Section 9.3

The accounts and other records of VIT shall be open for inspection to representatives of VPA at all times during reasonable hours.

### Section 9.4

VIT shall furnish to VPA a detailed monthly financial statement for each Terminal, and a consolidated statement for all Terminals, which statements shall include, without limitation, the following: (i) an income statement, (ii) a balance sheet (consolidated statement only), as of the end of each month, (iii) a condensed budget comparison, (iv) the cash receipts and disbursements, (v) a listing of payments for equipment and capital projects, (vi) an accounts receivable aging schedule, and (vii) the corporate log of ships tonnage and container activity report.

### Section 9.5

At least ninety (90) days prior to the beginning of each fiscal year, VPA and VIT staff members shall meet to develop a basis for structuring the Terminal revenue and expense budget and cash flow plan for the following year. They shall calculate for recommendation to

the VPA Board of Commissioners the monthly payment from VIT to VPA for the next year as provided for in Appendix, Section 1 and shall review the status of budgeted equipment purchases and capital projects including those for which the General Assembly has made appropriations.

#### Section 9.6

At least forty-five (45) days prior to the beginning of each fiscal year, VIT shall submit to VPA for its review and approval an annual budget for such fiscal year for each Terminal and in consolidation, broken down by calendar quarters, of the Current Expenses of VIT, as defined in Section 101 of the Resolution, in the operation, repair and maintenance of the Terminals during such fiscal year. The budget shall be in a form and reasonable detail generally conforming to budgets of public authorities operating facilities substantially comparable to the Terminals and shall include, among other costs: (i) compensation of employees and officers, stating the number of employees, (ii) fees to independent contractors and service contractors, (iii) cost of materials, supplies and equipment, (iv) insurance costs, (v) cost of maintenance dredging, (vi) expenditures for business promotion, and (vii) such other costs and expenses to be incurred as Current Expenses during such fiscal year. VIT shall also make available to VPA such other information as VPA may reasonably request in connection with the preparation of such budget. The budget submission shall also include price lists setting priorities of operational equipment to be purchased by VIT and capital maintenance and improvement projects planned for accomplishment in the following year. The budget shall be supported by an estimated cash flow statement for the year, for each

Terminal and in consolidation, in reasonable detail, broken down by calendar months, of (i) the estimated surplus or deficit, (ii) the estimated receipts and disbursements, including monies due to be transferred to VPA or to be transferred by VPA from the General Revenue Fund to VIT, and (iii) estimates of expenditures for operating equipment, renovations, alterations, rebuildings, replacements, additions, improvements and extraordinary maintenance in and to the terminals. VPA shall promptly review such budget and inform VIT either of its approval or its disapproval; in the event of the latter, VPA shall submit items in question to VIT for explanation, clarification or modification. VIT and VPA agree that such budget shall be approved and adopted not later than July 1 in each fiscal year.

#### Section 9.7

VIT shall comply with such budget as approved and shall not deviate therefrom, incur any additional expenses or change the manner of the operation of the Terminals without the VPA approval, except for an emergency or other circumstances that make such approval impractical and except that VIT may reallocate any amount budgeted with respect to any item in the applicable budget estimate to another item budgeted therein so long as the total amount of expenditures authorized by such budget shall not be exceeded. The Executive Director shall inform the Board of Commissioners at least quarterly of the budget changes. VPA and VIT staff members shall meet in the month following each quarter to review the budget for progress against plan and determine any required changes to the budget. It is agreed that so long as any bonds are outstanding, the VIT budget shall conform to applicable provisions of the Resolution, in particular Section 718.

The above paragraph notwithstanding, VIT shall not reallocate, in its budget, items for capital expenditure into current or operating expenses.

#### Section 9.8

VIT agrees that it shall pay from money held in the operating account its Current Expenses, in conformity with the applicable budget, incurred in the operation, repair and maintenance of the Terminals. Payments of such Current Expenses from the operating account and payments for any property or improvement not within the purview of Current Expenses, as approved and financed by the VPA, shall be made by VIT only upon the basis of requisitions, appropriately differentiating between Current Expenses and such other expenditures, submitted to its authorized officer, signed by such officer or employee of VIT as shall be designated therefor, identifying the number of each such payment, the name of the payee thereof, the respective amounts to be paid and the purpose by general classification for which each obligation to be paid was incurred. In addition, a certificate shall be signed by a duly designated officer or employee of VIT which shall be attached to such requisition certifying that (i) obligations in the stated amounts have been incurred by VIT and are presently due and payable and that each such obligation was properly incurred as an item of justified expense and has not been paid, (ii) there has not been filed with or served upon VIT notice of any lien or attachment or a claim not then released affecting the right of such payee to receive payment of the amount stated in such requisition, (iii) the total amount of such payments for Current Expenses will not be in excess of what is a reasonable balance therefor in the respective budget or any amendment

thereof or supplement thereto and, (iv) the total amount of such expenditures not within the purview of Current Expenses are for improvements and other property approved by VIT and the VPA and have not been paid out of money provided or to be provided by the VPA.

VIT further covenants that said expenses incurred in any fiscal year will not exceed the reasonable and necessary amount thereof.

#### Section 9.9

VIT shall receive and dispose of claims for damages arising in connection with the Terminals; provided that no claim for more than Ten Thousand Dollars (\$10,000) payable from revenues of the Terminals shall be paid by VIT without the prior written approval of an officer of VPA designated by the VPA Board of Commissioners. All such claims and all settlements shall be promptly reported in writing by VIT to the VPA.

### ARTICLE X

#### SECURITY

##### Section 10.1

VPA shall adopt all Rules and Regulations governing the security of the terminals with input and advice from VIT. Rules and Regulations shall be uniform, to the extent deemed practicable by VPA.

##### Section 10.2

The VPA will provide all security at the Terminals. VPA ~~shall~~ cooperate with VIT to meet Terminal security needs. VPA ~~shall~~ cooperate with VIT in the enforcement of VIT policy not necessarily stipulated in the VPA Rules and Regulations.



## ARTICLE XI

### UTILITIES

#### Section 11.1

The VPA will, if requested by VIT, contract for utilities serving the terminals.

#### Section 11.2

VIT will pay the full cost of the utility services provided under such contracts.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

#### Section 12.1

VIT shall appoint its General Manager, or whatever position shall be established as its chief operating and executive officer, only with prior review and concurrence of the VPA Board of Commissioners.

#### Section 12.2

VIT may change its Articles of Incorporation and Bylaws only with prior review and concurrence of the VPA Board of Commissioners.

#### Section 12.3

This Agreement provides solely for the operation of the Terminals by VIT, and conveys no interest in real or personal property to VIT. VIT may not assign any of its rights or obligations under this agreement to others without the prior written consent of the Board of Commissioners of VPA. VIT may, however, with reasonable prior notice to VPA, permit others to occupy portions of the terminals by permit or license for purposes consistent with the operation thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their authorized officers and to have their respective seals impressed hereon and duly attested, all as of the date and year first above written.

(seal)  
Attest:

Nelene M. Grover  
Title Deputy Clerk  
Nelene M. Grover  
Virginia Port Authority

(seal)  
Attest:

Elise Tilghman  
Clerk Elise Tilghman  
Virginia Port Authority

(seal)  
Attest:

Anita D. Bene  
Assistant Secretary  
Anita D. Bene  
Virginia International Terminals, Inc.

COMMONWEALTH OF VIRGINIA

BY Vivian E. Watts  
Vivian E. Watts, Secretary of Transportation  
and Public Safety

VIRGINIA PORT AUTHORITY

BY J. Robert Bray  
Executive Director, Virginia Port Authority  
J. Robert Bray

VIRGINIA INTERNATIONAL  
TERMINALS, INC.

BY James N. Crumbley  
General Manager, Virginia International Terminals, Inc.  
James N. Crumbley

Beginning at a monument at the intersection of the eastern boundary line of Hampton Boulevard, formerly Maryland Avenue, and on the centerline between double main tracks leading from the Army Supply Base, said centerline being hereinafter referred to as "Base Line"; thence along the eastern line of Hampton Boulevard N  $40^{\circ}-58'-00''$  W (True), 251.30 feet to the southeastern corner of property of the Armed Forces Staff College; thence on a line parallel to the Base Line and 210 feet northerly from and at right angles to the Base Line, N  $82^{\circ}-21'$  E, 3,189.66 feet to a point at the southeast corner of property conveyed to the U.S. Navy; thence N  $22^{\circ}-11'$  E, 132.99 feet to a point; thence S  $58^{\circ}-14'$  E, 203.19 feet to a point; thence on a curve to the left, the radius of which is 496.69 feet, an arc distance of 212.15 feet to a point which is 100 feet northerly from and at right angles to the Base Line; thence N  $82^{\circ}-21'$  E, on a line parallel with and 100 feet distant northerly from Base Line a distance of 1404.68 feet to a point which is on the southeasterly boundary line of Lot 9, in Block 10, as it appears on the Plat of North Titustown which is recorded in the Office of the Clerk of the Circuit Court of the City of Chesapeake, Va. in Map Book II at page I; thence N  $24^{\circ}-05'-30''$  E a distance of 54.33 feet on said southeasterly boundary of Lot 9 produced to its intersection with the northeasterly boundary of North Titustown, said intersection being N  $66^{\circ}-01'-30''$  W, a distance of 278.84 feet from a Rail Monument set in concrete on Base Line at Station 138 plus 62.6 of Base Line survey; thence N  $66^{\circ}-01'-30''$  W, a distance of 7.22 feet to a point which is 150 feet distant northerly from and at right angles to aforesaid Base Line; thence N  $82^{\circ}-21'$  E, on a line parallel with and 150 feet distant northerly from said centerline a

S  $6^{\circ}-23'$  E, on the centerline of said creek a distance of 75.02 feet to a point which is 75 feet distant northerly from and at right angles to aforesaid Base Line; thence N  $82^{\circ}-21'$  E, a distance of 269.01 feet to the intersection with a curve to the left, thence on the arc of said curve a distance of 799.8 feet, said curve having a radius of 428.34 feet and a chord of 688.57 feet, said chord making an included northeasterly angle of  $69^{\circ}-05'-30''$  at its point of beginning with last described course at its point of ending and bearing N  $13^{\circ}-15'-30''$  E; thence N  $49^{\circ}-46'$  E a distance of 29.5 feet to a point on the westerly right of way boundary of the Norfolk and Western Railway formerly the Virginian Railway; thence S  $49^{\circ}-44'$  E, on said westerly right of way boundary a distance of 1,299.58 feet; thence S  $30^{\circ}-46'$  W, a distance of 29.5 feet; thence northwesterly on the arc of a curve to the left a distance of 502.52 feet; said curve having a radius of 905.37 feet, a chord of 496.09 feet and a central angle of  $31^{\circ}-43'-06''$ , said chord bearing N  $75^{\circ}-08'-03''$  W; thence S  $7^{\circ}-06'$  W, a distance of 11.87 feet to a point 75 feet distant southerly from and at right angles to aforesaid Base Line; thence S  $32^{\circ}-21'$  W, on a line parallel with aforesaid Base Line a distance of 947.77 feet to the centerline of aforementioned creek; thence S  $29^{\circ}-25'$  W on the centerline of said creek a distance of 94.0 feet to a point 150 feet distant southerly from and at right angles to aforesaid Base Line; thence S  $82^{\circ}-21'$  W on a line parallel with aforesaid Base Line a distance of 2,527.23 feet to the intersection with the northwesterly boundary of Lot 26, Block 10, of North Titus-

SEE TWO VEP CO ENCLOSURES GRANTED BY UNITED STATES

DB 1028 pg 515 recorded Nov. 19, 1955

DB 1059 pg 398 recorded July 13, 1966

town, produced northeasterly; thence S  $24^{\circ}-05'-30''$  W a distance of 138.69 feet to the southerly boundry of Cross Street as shown on the recorded plat of North Titustown; thence N  $65^{\circ}-54'-30''$  W on the southerly boundary of Cross Street a distance of 11.12 feet to the southerly boundary of Lexington Street; thence S  $88^{\circ}-38'-30''$  W on the southerly boundary of Lexington Street a distance of 1169.89 feet to the intersection with the west boundary of North Titustown; thence S  $2^{\circ}-11'-30''$  E on said west boundary a distance of 116.64 feet to a point 250 feet distant southerly from and at right angles to aforesaid Base Line; thence S  $82^{\circ}-21'$  W on a line parallel with aforesaid Base Line a distance of 2522.33 feet; thence S  $87^{\circ}-45'-30''$  W a distance of 129.24 feet to the intersection with the westerly boundary of Lot 10 of the Northerly Block of White Town as shown on the plat recorded in the Office of the Clerk of the Circuit Court of the City of Chesapeake, Virginia in Deed Book 452 at page 167; thence S  $23^{\circ}-59'$  W on the westerly boundary of said Lot 10, a distance of 49.15 feet to the southerly boundary of the northerly block of White Town; thence N  $66^{\circ}-01'$  W on said southerly boundary a distance of 99.79 feet; thence S  $87^{\circ}-45'-30''$  W, 1,288.48 feet to a point in the eastern boundary of Hampton Boulevard; thence along the eastern line of Hampton Boulevard N  $40^{\circ}-58'$  W, 126.71 feet to the point of beginning, containing 75.69 acres.

Beginning at the northwestern corner of Cloncurry Road and Hampton Boulevard, formerly Maryland Avenue, in the City of Norfolk, Virginia, as it appears on the plat of "Lockhaven", which is recorded in the Office of the Clerk of the Circuit Court of the City of Chesapeake, Virginia in Map Book 10 at pages 47, 49 and 51; thence S  $47^{\circ}-41'-52''$  W along the northern line of Cloncurry Road a distance of 300.12 feet

hereto as Exhibit B and made a part hereof entitled: "Property Line Survey of Norfolk International Terminals, Norfolk, Virginia for Norfolk Port & Industrial Authority" dated January 3, 1969, revised February 26, 1969, Scale: 1 inch equals 200 feet, in 3 sheets, prepared by Baldwin and Gregg, Civil Engineers and Surveyors, Norfolk, Virginia; thence N  $42^{\circ}-18'-08''$  W along the eastern line of Milson Avenue a distance of 150 feet to an iron pin in the dividing line between Lot 6 and Lot 7 in Block 8 as it appears on the said plat of Lochhaven; thence S  $47^{\circ}-41'-52''$  W across Milson Avenue a distance of 60 feet to a point in the western line of Milson Avenue and in the dividing line between Lot 27 and Lot 28 in Block 12 as it appears on the said plat of Lochhaven; thence continuing S  $47^{\circ}-41'-52''$  W along the last mentioned dividing line and along the dividing line between Lots 22 and 35, Lots 21 and 36, Lots 20 and 37, Lots 19 and 38, Lots 18 and 39, Lots 17 and 40, Lots 16 and 41, Lots 15 and 42, Lots 14 and 43, Lots 13 and 44, and Lots 7 and 6, all in Block 12 as it appears on the said plat of Lochhaven a distance of 550 feet to the eastern line of Argyle Avenue; thence continuing S  $47^{\circ}-41'-52''$  W along the last mentioned line a distance of 30.70 feet to an iron pin on the centerline of Argyle Avenue; thence southwestwardly along the arc of a curve to the left to a point in the western line of Argyle Avenue and in the dividing line between Lot 38 and Lot 39 in Block 18 as it appears on the said plat of Lochhaven; thence continuing southwestwardly along the arc of a curve to the left along the last mentioned dividing line and along the dividing line between Lots 32 and 45, Lots 31 and 46, Lots 30 and 47, Lots 29 and 48, Lots 28 and 49, Lots 27 and 50, Lots 26 and 51, Lots 25 and 52, Lots 24 and 53, Lots 23 and 54, Lots 22 and 55, Lots 21 and 56, Lots 20 and 57, Lots 19 and 58, Lots 18 and 59, Lots 17 and 60, Lots 16 and 61, Lots 15 and 62, Lots 14 and 63 and between Lots 13 and 64 to a point in the



on the said plat of Lochhaven; thence  $N 55^{\circ}-26'-40''$  W along the dividing line between Lot 64 and Lots 6, 5, 4, 3, 2 and 1 in said Block 18 a distance of 150 feet to a pin in the eastern line of Commonwealth Avenue as it appears on the said plat of Lochhaven; thence  $N 69^{\circ}-03'-18''$  W across Commonwealth Avenue at the termination of that portion of Commonwealth Avenue lying wholly north of the northern line of North Shore Road as the same was closed and vacated by Act of Council by Ordinance No. 15,613 adopted December 11, 1951 and effective January 10, 1952 a distance of 71.85 feet to a point in the western line of Commonwealth Avenue and in the dividing line between Lot 13 and Lot 12 in Block 19 as it appears on the said plat of Lochhaven; thence  $N 55^{\circ}-55'-03''$  W along the dividing line between Lot 13 and Lots 12, 11, 10, 9, 8 and 7, and between Lot 72 and Lots 6, 5, 4, 3, 2 and 1, all in Block 19 aforesaid, a distance of 300.90 feet to a point in the eastern line of Fitzhugh Avenue; thence continuing  $N 55^{\circ}-55'-03''$  W across Fitzhugh Avenue at the termination of that portion of Fitzhugh Avenue lying wholly north of the northern line of North Shore Road as the same was closed and vacated by Act of Council by Ordinance No. 15,614 adopted December 11, 1951 and effective January 10, 1952 to a point in the western line of Fitzhugh Avenue; thence  $S 33^{\circ}-15'-43''$  W along the western line of Fitzhugh Avenue to the northern line of North Shore Road, formerly Melrose Avenue; thence continuing  $S 33^{\circ}-15'-43''$  W to an iron pin in the centerline of North Shore Road; thence  $S 31^{\circ}-36'-46''$  W across North Shore Road to the southwestern corner of North Shore Road and Fitzhugh Avenue; thence continuing  $S 31^{\circ}-36'-46''$  W along the western line of Fitzhugh Avenue to a cross cut in the northwestern corner of Brandon Road and Fitzhugh Avenue; thence  $N 56^{\circ}-24'-24''$  W along the northwestern line of Brandon Road a distance of 195.10 feet to an

of the Harbor Line Maps aforesaid; thence  $N 9^{\circ}-12'-21'' W$  along the said bulkhead line established by the Secretary of the Army a distance of 5,392.79 feet to a point, said point being designated as point "4'" (four prime) on the map prepared by the Corps of Engineers, U. S. Army, Office of the District Engineer, Norfolk, Virginia, entitled "Norfolk Harbor, Va., Harbor Lines, Hampton Roads" approved March 21, 1958, File No. C 3-1-6-395 (3); thence  $N 1^{\circ}-30'-03'' E$  along the last mentioned bulkhead line established by the Secretary of the Army a distance of 1,361.86 feet to a point on the original northern exterior boundary of the old Army Supply Base as it appears on sheet No. 1 of the aforementioned "Property Line Survey of Norfolk International Terminals"; thence  $S 83^{\circ}-29'-57'' E$  864.14 feet along said original northern exterior boundary line to a point, said point being the northwestern corner of a tract containing 10.96 acres more or less conveyed to the Hampton Roads Sanitation District by Quitclaim Deed recorded in Deed Book 570 at page 259 in the Office of the Clerk of the Corporation Court of the City of Norfolk; thence following on the property lines of said Hampton Roads Sanitation District Commission property for seven (7) courses and distances as follows:  $S 2^{\circ}-07'-59'' W$ , 550.48 feet to a point in the northern line of a building, said building now removed; thence along the northern wall of said building,  $N 81^{\circ}-02'-32'' E$ , 19.40 feet to a point once occupied by the northeastern corner of said building; thence along the eastern side of said building,  $S 1^{\circ}-31'-54'' W$ , 1.20 feet to the end of a fence; thence on the line of said fence  $N 59^{\circ}-04'-48'' E$ , 76.37 feet to an angle in the fence; thence on the line of the fence  $N 81^{\circ}-01'-42'' E$ , 574.76 feet to a corner in the fence; thence on the line of the fence  $S 9^{\circ}-08'-28'' E$ , 124.52 feet to a corner in the fence; thence on the line of the fence  $N 81^{\circ}-02'-32'' E$ ,



iron pin at the intersection of the prolongation northeastwardly across Brandon Road of the dividing line between Lot No. 12 and Lot No. 13 in Block 25 as it appears on the said plat of Lochhaven; thence S  $65^{\circ}-10'-36''$  W across Brandon Road to a point in the dividing line between Lot No. 12 and Lot No. 13 in Block 25 aforesaid; thence S  $65^{\circ}-10'-36''$  W along the last mentioned dividing line and the prolongation southwestwardly thereof a distance of 796.35 feet to an old pin located in the line of the old timber bulkhead across Capps Creek as it appears on sheet No. 1 of the aforementioned "Property Line Survey of Norfolk International Terminals"; thence S  $33^{\circ}-45'-40''$  W along the line of an old bulkhead a distance of 259.44 feet to an iron pin; thence S  $9^{\circ}-08'-13''$  W along the line of the said old bulkhead a distance of 3,564.44 feet to a point, said point being designated as point "6'" (six prime) on the map prepared by the Corps of Engineers, U. S. Army, Office of the District Engineer, Norfolk, Virginia, entitled, "Norfolk Harbor, Va., Harbor Lines, Hampton Roads" approved March 21, 1958, File No. c 3-1-6-895 (4), and said point "6'" being the northeastern termination of the bulkhead line and limit of solid fill established by the Secretary of the Army at the mouth of the Lafayette River; thence S  $88^{\circ}-40'-04''$  W along the said bulkhead line established by the Secretary of the Army to its intersection with the mean low water line of an irregular shaped shoal or bar of land known as "Sandy Point" which extends southeastwardly into the mouth of the Lafayette River a distance of about 500 feet at mean low water; thence southeastwardly, eastwardly, southwardly, westwardly, and northwestwardly along the mean low water line in the mouth of the Lafayette River to its intersection with the said bulkhead line established by the Secretary of the Army; thence S  $88^{\circ}-40'-04''$  W along the last mentioned line to a point, said point being designated as point "5'" (five prime) on sheet

380.71 feet to a corner in the fence, said fence corner being the southeastern corner of the aforesaid Hampton Roads Sanitation District property and the southwestern corner of a tract containing 12.25 acres more or less conveyed to the U. S. Navy and shown on a plat entitled U. S. Navy Public Works Center, Norfolk, Virginia, U. S. Fleet Training Center, Firefighting School, Property Survey, PWC Drawing No. 5944 dated Jan. 7, 1965; thence on the property lines of said U. S. Navy Firefighting School property for five (5) courses and distances: N 77°-21'03" E, 185.59 feet to an iron pin; N 83°-49'-3" E, 265.74 feet to a nail; N 76°-50'-14" E, 250.00 feet to a pin; S 79°-23'-21" E, 288.81 feet to a nail at the western edge of the pavement of Railroad Avenue; thence along the western edge of Railroad Avenue, N 5°-14'-34" W, 663.00 feet to an iron pin in the original northern boundary of the old Army Base; thence along said northern boundary, N 75°-30'-11" E, 245.26 feet to the northwestern corner of a tract containing 90.05 acres conveyed to the U. S. Navy and shown on a plat entitled District Public Works Office, Fifth Naval District, Norfolk, Virginia, "Survey of Lands under Cognizance of Maritime Commission at Army Base Terminals Proposed for Transfer to the Navy Department"; DPMO Drawing No. 52,608, dated Jan. 8, 1958, now known as Naval Supply Center Annex; thence on the property lines of said Naval Supply Center Annex for three courses and distances as follows: S 5°-14'-34" E, 1,584.32 feet on a line ten (10) feet westerly from and parallel to the western edge of the pavement of West Main Street to an iron pin; thence S 55°-04'-24" E, 707.36 feet to an iron pin; thence N 81°-01'-45" E, 2,116.14 feet along a line ten (10) feet southerly from and parallel to the southern edge of the pavement of South Main Street to a point in the western line of Hampton Boulevard; thence on the western line of Hampton Boulevard, S 42°-19'-E, 389.75 feet to the point of beginning, containing 450.35 acres,

of which 313.43 acres is high ground and 136.92 acres lies on the western side of the property between mean low water and the U. S. Government bulkhead line.

The Grantor doth further remise, release and forever quitclaim unto the Grantee all the rights, title and interest of the Grantor at law and in equity in and to those certain Piers Nos. 1 and 2 and breakwater shown on sheet one (1) of aforesaid "Property Line Survey of Norfolk International Terminals, Norfolk, Virginia for Norfolk Port & Industrial Authority."

Save and except 3 parcels of land as follows:

Parcel A. A certain triangular shaped parcel of land referred to in paragraph 31 of a memorandum of understanding executed by the U.S. Navy, the Virginia Department of Highways, and the City of Norfolk made August 17, 1971: Beginning at a point in the dividing line between property of the United States of America and property of the City of Norfolk, said point being distant N 82°-21'-00" E, 3,169.66 feet, as measured along said dividing line from the eastern line of Hampton Boulevard; thence along said dividing line the following two courses and distances: N 22°-11'-00" E, 132.99 feet; S 58°-14'-00" E, 202.31 feet to a point; thence S 85°-43'-00" W across property of the City of Norfolk a distance of 222.83 feet to the point of beginning. The above described parcel contains 0.3 acres of land. For a more particular description of Parcel A, reference is made to a sketch entitled, "Naval Station, Norfolk, Virginia, A Portion of the Former Maritime Adm. Railroad Right of Way Proposed For Acquisition", dated 4 February 1971, attached as Exhibit "C" to the aforesaid memorandum. (Agreement No. 9505)

Parcel B. An irregular shaped parcel of land required for the right of way for Interstate Route 564, as shown on plan sheets No. 502-5 and 502-5A, State Project U000-122-107, R/W 201, revised July 27, 1970: Beginning at a point in the dividing line between property of the United States of America and property of the City of Norfolk, said point being on the arc of a curve to the left, the radius of which is 428.34 feet, an arc distance of 257.26 feet northeastwardly from a point in the southern line of the Sewalls Point Golf Course; thence northeastwardly and northwardly along said dividing line, which follows the arc of a curve to the left, the radius of which is 428.34 feet, an arc distance of 454.38 feet to a point; thence  $N65^{\circ}-16'-28''$  E across property of the City of Norfolk a distance of 58.40 feet to a point in the southern right of way line of the Norfolk and Western Railway; thence  $S 51^{\circ}-02'-37''$  E along the last mentioned line a distance of 436.07 feet to a point; thence across property of the City of Norfolk the following three courses and distances:  $S 81^{\circ}-20'-16''$  W, 128.96 feet;  $S 56^{\circ}-48'-10''$  W, 173.69 feet;  $S 60^{\circ}-51'-38''$  W, 141.89 feet to the point of beginning. The above described parcel contains 1.670 acres of land.

Parcel C. The right of way for International Terminal Boulevard between Interstate Route 564 and Hampton Boulevard, as shown on plan sheets No. 4, 4A, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, State Project U000-122-106 R/W 201, as revised, and the right of way for Interstate Route 564, as shown on plan sheet No. 502-5A, State Project U000-122-107, R/W 201, revised July 27, 1970, parcel 003.

DIVISION OF SURVEYS  
DEPT. OF PUBLIC WORKS  
NORFOLK, VA.

FEB 8, 1977

LEGAL DESCRIPTION OF THE PORT FACILITY PROPERTY  
AT NEWPORT NEWS, VIRGINIA

PARCEL NO. 1--LAND AREA

BEGINNING at Point 1 in the Chesapeake and Ohio Railway's Bulkhead Line and being 120.35 feet northwesterly at right angles from the northwesterly face of fender piling of the northwesterly edge of Pier No. 2; thence N. 62° 17' 07" E. 170.268 feet to Point 2; thence S. 31° 36' 27" E. 115.378 feet to Point 3; thence N. 87° 56' 37" E. 493.552 feet to Point 4; thence N. 62° 23' 47" E. approximately parallel with and 10 feet southerly from the center line of the tangent of Track No. 147 a total length of 1723.927 feet to Point 5; thence on an arc of a curve to the left having a radius of 611.359 feet a length of 102.719 feet, the chord bearing N. 44° 17' 35" E. 102.598 feet to Point 6; thence on an arc of a curve to the left having a radius of 1001.314 feet a length of 100.042 feet, the chord bearing N. 36° 37' 03" E. 100.000 feet to Point 7; thence on the arc of a curve to the left having a radius of 573.686 feet a length of 100.127 feet, the chord bearing N. 28° 45' 19" E. 100.000 feet to Point 8; thence on the arc of a curve to the left having a radius of 3912.564 feet a length of 100.002 feet, the chord bearing N. 23° 01' 23" E. 100.000 feet to Point 9; thence on the arc of a curve to the left having a radius of 3914.050 feet a length of 100.003 feet, the chord bearing N. 21° 33' 32" E. 100.000 feet to Point 10; thence on the arc of a curve to the left having a radius of 467.430 feet a length of 100.192 feet, the chord bearing N. 14° 41' 11" E. 100.000 feet to Point 11; thence on the arc of a curve to the left having a radius of 1707.452 feet, a length of 100.014 feet, the chord bearing N. 6° 52' 04" E. 100.000 feet to Point 12; thence on the arc of a curve to the left having a radius of 311.599 feet a length of 115.599 feet, the chord bearing N. 5° 26' 36" W. 114.936 feet to Point 13; thence N. 62° 14' 27" E. 20.000 feet to Point 14; thence S. 27° 45' 32" E. approximately parallel with and 30 feet southwesterly from the tangent portion of Track No. 211 and the same produced a total distance of 996.204 feet to Point 15; thence on the arc of a curve to the right having a radius of 539.232 feet, a length of 57.237 feet, the chord bearing S. 7° 18' 15" E. 57.210 feet to Point 16; thence on the arc of a curve to the right having a radius of 569.692 feet, a length of 104.142 feet, the chord bearing S. 0° 58' 25" W. 103.997 feet to Point 17; thence on the arc of a curve to the right having a radius of 523.416 feet, a length of 103.737 feet, the chord bearing S. 11° 53' 18" W. 103.567 feet to Point 18; thence on the arc of a curve to the right having a radius of 1220.412 feet, a length of 100.442 feet, the chord bearing S. 19° 55' 26" W. 100.414 feet to Point 19; thence on the arc of a curve to the right having a radius of 485.006 feet, a length of 100.178 feet, the chord bearing S. 28° 11' 56" W. 100.000 feet to Point 20; thence on the arc of a curve to the right having a radius of 1643.012 feet, a length of 100.015 feet, the chord bearing S. 35° 51' 36" W. 100.000 feet to Point 21; thence on the arc of a curve to the right having a radius of 1643.274 feet, a length of 100.015 feet, the chord bearing S. 39° 20' 51" W. 100.000 feet to Point 22; thence S. 53° 31' 11" E. 20.683 feet to Point 23; thence S. 36° 28' 47" W. 46.687 feet to Point 24; thence S. 30° 43' 52" W. 385.454 feet to Point 25; thence on the arc of a curve to the right having a radius of 6937.708 feet, a length of 137.668 feet, the chord bearing S. 31° 17' 58.5" W. 137.632 feet to Point 26; thence on the arc of a curve to the right having a radius of 1398.514 feet, a length of 100.021 feet, the chord bearing S. 33° 55' 01" W. 100.000 feet to Point 27; thence on the arc of a curve to the right having a radius of 3156.925 feet, a length of 100.005 feet, the chord bearing S. 36° 52' 24" W. 100.000 feet to Point 28; thence on the arc of a curve to the right having a radius of 1300.692 feet, a length of 100.025 feet, the chord bearing S. 39° 59' 02" W. 100.000 feet to Point 29; thence on the arc of a curve to the right having a radius of



14383.907 feet, a length of 100.000 feet, the chord bearing S. 42° 23' 10" W. 100.000 feet to Point 30; thence on the arc of a curve to the right having a radius of 20585.327 feet, a length of 100.000 feet, the chord bearing S. 42° 43' 28" W. 100.000 feet to Point 31; thence S. 42° 51' 49" W. 325.656 feet to Point 32; thence S. 49° 53' 36" W. 195.179 feet to Point 33; thence on the arc of a curve to the left having a radius of 967.016 feet, a length of 40.197 feet, the chord bearing S. 48° 42' 09" W. 40.194 feet to Point 34; thence on a curve to the left having a radius of 5050.641 feet, a length of 100.002 feet, the chord bearing S. 46° 56' 40" W. 100.000 feet to a Point 35; thence on a curve to the left having a radius of 1449.590 feet, a length of 100.020 feet, the chord bearing S. 44° 24' 02" W. 100.000 feet to Point 36; thence on the arc of a curve to the left having a radius of 5216.691 feet, a length of 100.002 feet, the cord bearing S. 41° 52' 29" W. 100.000 feet to Point 37; thence S. 41° 19' 32" W. 127.494 feet to Point 38; thence S. 48° 56' 15" E. 59.852 feet to Point 39; thence S. 41° 03' 39" W. 165.136 feet to Point 40; thence S. 48° 51' 23" E. 65.467 feet to Point 41; thence S. 42° 46' 12" W. 6.882 feet to Point 42 in The Chesapeake and Ohio Railway's Bulkhead Line; thence on said Bulkhead Line N. 48° 41' 27" W. 17.985 feet to Point 43, S. 61° 17' 36" W. 36.618 feet to Point 44, N. 52° 29' 16" W. 88.491 feet to Point 45 at face of fender piling and said bulkhead line in southeast corner of Pier No. 8, N. 47° 22' 32" W. 218.729 feet to Point 46 at face of fender piling and said bulkhead line in northeast corner of Pier No. 8, N. 44° 46' 22" W. 78.162 feet to Point 47, N. 39° 35' 29" W. 83.635 feet to Point 48 at said bulkhead line and center line of Track No. 225 on Transfer Bridge No. 1 (B), N. 43° 33' 40" W. 400.793 feet to Point 49 at face of fender piling and said bulkhead line in southeast corner of Pier No. 6, N. 42° 48' 15" W. 203.785 feet to Point 50 at said bulkhead line and face of fender piling in northeast corner of Pier No. 6, N. 41° 13' 11" W. 147.564 feet to Point 51 at said bulkhead line and face of fender piling in southeast corner of Pier No. 5, N. 34° 02' 54" W. 183.138 feet to Point 52 at said bulkhead line and face of fender piling in northeast corner of Pier No. 5, N. 32° 37' 24" W. 146.320 feet to Point 53 at said bulkhead line and face of fender piling in southeast corner of Pier No. 4, N. 40° 27' 56" W. 164.633 feet to Point 54 at said bulkhead line and face of fender piling in northeast corner of Pier No. 4, N. 31° 56' 47" W. 162.557 feet to Point 55 at said bulkhead line and face of fender piling in southeast corner of Pier No. 3, N. 26° 46' 10" W. 56.840 feet to Point 56 at said bulkhead line and face of fender piling in northeast corner of Pier No. 3, N. 30° 57' 49" W. 147.795 feet to Point 57 at said bulkhead line and face of fender piling in southeast corner of Pier No. 2, N. 33° 19' 13" W. 63.572 feet to Point 58 at said bulkhead line and face of fender piling in northeast corner of Pier No. 2, N. 30° 00' 01" W. 119.906 feet to Point 1 at the point of beginning and containing 90.927 acres.

#### PARCEL NO. 2--WATER AREA

BEGINNING at Point 1 in Chesapeake and Ohio Railway's Bulkhead Line; thence S. 62° 17' 07" W. parallel with and 120.35 feet northwesterly from the northwesterly face of fender piling of the northwesterly edge of Pier No. 2 and the same produced 784.732 feet to a point in the existing U.S. Pierhead Line; thence on said pierhead line S. 30° 25' 01" E. 954.481 feet to a point, S. 42° 02' 31" E. 1613.982 feet to a point 118.15 feet southeasterly from the southeasterly line of face of fender piling produced of Pier No. 8; thence N. 42° 46' 12" E. parallel with and 118.15 feet from the southeasterly line of face of fender piling produced and said face of fender piling of Pier No. 8, 881.263 feet to Point 42 in The Chesapeake and Ohio Railway's Bulkhead Line; thence on said Bulkhead Line N. 48° 41' 27" W. 17.985 feet to Point 43, S. 61° 17' 36" W. 36.618 feet to Point 44, N. 52° 29' 16" W. 88.491 feet to Point 45 at face of fender piling and said bulkhead line in southeast corner of Pier No. 8, N. 47° 22' 32" W. 218.729 feet to Point 46 at face of fender piling and said bulkhead line in northeast corner of Pier No. 8, N. 44° 46' 22" W. 78.162 feet to Point 47, N. 39° 35' 29" W. 83.635 feet to Point 48 at said bulkhead line and center line of Track No.

225 on Transfer Bridge No. 1 (B), N. 43° 33' 40" W. 400.793 feet to Point 49 at face of fender piling and said bulkhead line in southeast corner of Pier No. 6, N. 42° 48' 15" W. 203.785 feet to Point 50 at said bulkhead line and face of fender piling in northeast corner of Pier No. 6, N. 41° 13' 11" W. 147.564 to Point 51 at said bulkhead line and face of fender piling in southeast corner of Pier No. 5, N. 34° 02' 54" W. 183.138 feet to Point 52 at said bulkhead line and face of fender piling in northeast corner of Pier No. 5, N. 32° 37' 24" W. 146.320 feet to Point 53 at said bulkhead line and face of fender piling in southeast corner of Pier No. 4, N. 40° 27' 56" W. 164.633 feet to Point 54 at said bulkhead line and face of fender piling in northeast corner of Pier No. 4, N. 31° 56' 47" W. 162.557 feet to Point 55 at said bulkhead line and face of fender piling in southeast corner of Pier No. 3, N. 26° 46' 10" W. 56.840 feet to Point 56 at said bulkhead line and face of fender piling in northeast corner of Pier No. 3, N. 30° 57' 49" W. 147.795 feet to Point 57 at said bulkhead line and face of fender piling in southeast corner of Pier No. 2, N. 33° 19' 13" W. 63.572 feet to Point 58 at said bulkhead line and face of fender piling in northeast corner of Pier No. 2, N. 30° 00' 01" W. 119.906 feet to Point 1 at the point of beginning and containing 44.721 acres.

DESCRIPTION OF DEMISED PREMISES

PARCEL I

All of that certain parcel or tract of land, together with the improvements thereon as of the date of this lease, lying, being, and situated in the City of Portsmouth, Virginia, and described by being bounded as follows:

Beginning at a certain point in the north line of Seaboard Avenue, which point is the intersection of the west line of Spencer Street if continued to the said north line of Seaboard Avenue, and from the point of beginning running along and with the aforesaid west line of Spencer Street and its extension, S 5° 9' 40" E a distance of 260.00 feet to the north line of Pinners Avenue; thence S 84° 50' 20" W along and with the north line of Pinners Avenue a distance of 1,880.00 feet to the east line of Hill Street; thence N 5° 9' 40" W along and with the east line of Hill Street and the extension northward of the east line of Hill Street, a distance of 260.00 feet to the north line of Seaboard Avenue; thence S 84° 50' 20" W along and with the north line of Seaboard Avenue a distance of 367.14 feet to a point at the east line of property now or formerly belonging to Foley; thence N 4° 39' 00" W along and with the east line of the property now or formerly belonging to Foley a distance of 839.85 feet to the bulkhead line of the Western Branch of the Elizabeth River; thence N 79° 47' 05" E along and with the aforesaid bulkhead line a distance of 2,500.94 feet to the east edge of the marginal wharf; thence continuing along and with the aforesaid bulkhead line N 88° 54' 50" E a distance of 808.00 feet more or less to the west line of the property of the City of Portsmouth, which property is currently known as the "Sea-Land Service Terminal"; thence along the west line of the City of Portsmouth as aforesaid S 6° 44' 33" W a distance of 360.00 feet more or less to a point; thence continuing along and with the line



the west line of Serpell Street if continued to the said south line of Carolina Avenue, and from the said point of beginning running along the south line of Carolina Avenue S 84° 51' 42" W a distance of 1,418.00 feet to the east line of Hill Street; thence S 5° 08' 18" E along the east line of Hill Street a distance of 200.00 feet to a point in the north line of Southern Avenue; thence N 84° 51' 42" E a distance of 650.00 feet along the north line of Southern Avenue to a point in the west line of Page Street; thence N 5° 08' 18" W a distance of 100.00 feet to a point in the west line of Page Street; thence N 84° 51' 42" E a distance of 768.00 feet to a point in the west line of Serpell Street; thence N 5° 08' 18" W along the west line of Serpell Street a distance of 100.00 feet to the point of beginning.

When the VPA purchases the property of PTI as set forth in ARTICLE XVI of this Lease, all of the parcels of land conveyed by PTI to VPA shall become a part of Parcel I of the Demised Premises.

Such addition to the Demised Premises shall also cause the minimum guaranteed rent to be increased as provided for by Section III of Exhibit C of this Lease.

#### DESCRIPTION OF DEMISED PREMISES

##### PARCELS II & III

The VPA agrees to continue the 22 + acre parcel as shown as Parcel II on Exhibit A.1 which it now leases from the Southern Railway System as a part of the Demised Premises and VPA will continue to permit PTI to use this Parcel II for such period or periods of time as the property is under lease to or it is owned by the VPA and the property is not required by VPA for a major port construction project.

The VPA agrees to continue the 6.2 + acre parcel as shown as Parcel III on Exhibit A.1 which it leases from the Seaboard Coast Line Railroad as part of the Demised Premises and VPA will continue to permit PTI to use this parcel so long as the property is leased to or owned by VPA and VPA does not require the property for a major port construction project.

It being understood and agreed that Parcels II and III will not be removed from useage by PTI without the VPA first conferring with PTI and giving PTI reasonable written notice that it will require the property for a major port construction project.